

REMARKS

The Office Action presents a Restriction Requirement under 35 U.S.C. § 121, requiring Applicant to elect for substantive examination the invention of one of three groups allegedly present in the application as filed. In particular, the Office Action identifies the following groups of claims:

Group I, claims 1-15,
Group II, claims 28 and 29, and
Group III, claims 30 and 31.

In response to these requirements, **Applicant hereby elects for examination Group I (claims 1-15)** with traverse. Examination on the merits is requested.

Notwithstanding the above election, Applicant respectfully requests that the restriction requirement be reconsidered. The Office Action states that Groups I and II are related as combination and subcombination, but that the groups are distinct because the “subcombination has separate utility such as a respiratory monitoring system, whereas the combination has utility as a gas delivery system.”

The Applicant submits that the restriction requirement based on combination and subcombination distinction does not comply with MPEP §806.05(c) because the separate utility of the subcombination suggested by the examiner is not unique to either group. The claimed invention of both groups includes a respiratory monitoring system.

Applicant submits that a combined search and examination of Groups I and II would not pose a serious burden to the Office. See MPEP §§ 803 and 808.02. The Office Action asserts that the inventions identified by these groups are distinct and have acquired a separate status in the art. In accordance with MPEP § 803, restriction is appropriate only when the groups are shown to be distinct and when there would be a “serious burden” placed on the Examiner to examine the claims without restriction. “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” MPEP § 803 (emphasis added). Each group of claims in the present application relates generally to a respiratory monitoring system. Therefore, the allegedly distinct groups asserted in the Office Action would nonetheless require the Examiner to search the same subclasses and consider

the same prior art references. Consequently, Applicant maintains that the examination of the pending claims in Groups I and II together will not place a serious burden upon the Examiner.

Conclusion

In view of the foregoing, Applicant respectfully requests that the Examiner examine the application upon the merits, and that the above remarks be fully considered in conjunction therewith. Timely allowance of pending claims 1-15, 28, and 29 and the issuance of a Notice of Allowance are requested.

Applicant has filed this Response and Amendment without increasing the number of claims above the number previously submitted or paid for. Accordingly, no additional claims fees are believed to be due at the present time. If such fees or any other fees associated with the filing of this paper are due at this time, please charge the fees to our Deposit Account No. 50-1349. Also, please credit any overpayments to Deposit Account No. 50-1349.

The Examiner is invited to contact Applicant's undersigned representative via telephone if such would expedite prosecution of this application toward allowance.

Respectfully submitted,

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